

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**THE ESTATE OF JAMES CROWDER
BY AND THROUGH CATHERINE WARD,
INDIVIDUALLY, AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JAMES CROWDER, AND ON BEHALF OF AND
FOR THE USE AND BENEFIT OF THE
WRONGFUL DEATH BENEFICIARIES
OF JAMES CROWDER**

Plaintiff,

v.

Case No: 4:12-CV-00054-SA-JMV

**CRYSTAL HEALTH & REHAB OF GREENWOOD,
LLC d/b/a CRYSTAL HEALTH & REHAB OF
GREENWOOD, COVENANT DOVE, LLC, COVENANT DOVE
HOLDING COMPANY, LLC, ARK MISSISSIPPI
HOLDING COMPANY, LLC, JUDY ULLERY, JOSHUA BATCHELOR,
UNIDENTIFIED ENTITIES 1-10, AND JOHN DOES 1-10 (AS TO THE
CRYSTAL HEALTH & REHAB FACILITY)**

Defendants.

ORDER GRANTING MOTION FOR LEAVE TO AMEND

Consistent with the court's oral ruling made during a telephonic hearing held this day, Plaintiff's second Motion for Leave to File First Amended Complaint [51] is **GRANTED**. Specifically, as in the court's prior Order [36] denying Plaintiffs' motion for leave to amend without prejudice, the court has applied the factors in *Hensgens v. Deere & Co.*, 833 F.2d 1179 (5th Cir. 1987). While the court's findings with regard to the *Hensgens* factors are largely consistent with the court's prior findings, the court should note that it is even more convinced

that the potential for prejudice to Plaintiff will be significant if the amendment is not allowed—considering that the court is bound by the Mississippi Court of Appeals’ holding in *Sykes v. Home Health Care Affiliates, Inc.*, No. 2011-CA-00913-COA, 2012 WL 4497362 (Miss. Ct. App. Oct. 2, 2012) and Miss. Code Ann. 11-7-13’s providing that “there shall be but one (1) suit for the same death.” Furthermore, Plaintiff has now complied with the notice requirement of Miss. Code Ann. § 15-1-36(15) with respect to the putative defendants. As such, the court can find no factor weighing heavily against allowing the proposed amendment and is of the opinion that the proposed amendment should be allowed.

THEREFORE, IT IS ORDERED that Plaintiff’s Motion for Leave to Amend is granted, and Plaintiff must file its amended complaint by 5:00 p.m. today. Additionally, considering that the amendment will destroy diversity, Plaintiff must file a motion to remand by 5:00 p.m. on February 27, 2013.

THIS the 26th day of February, 2013.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE